

2974

No. 15130

**United States**  
**Court of Appeals**  
for the Ninth Circuit

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FEDERAL DEPOSIT INSURANCE COR-  
PORATION, as Receiver of the Bank of North  
Idaho, Substituted for the Bank of North  
Idaho,

Appellant,

vs.

MERLE C. MYHRE and BETTY A. MYHRE,  
Husband and Wife,

Appellees.

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**Transcript of Record**

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**Appeal from the United States District Court**  
**for the District of Idaho,**  
**Northern Division.**

**FILED**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States, in and  
for the District of Idaho, Northern Division  
No. 1988

MERLE C. MYHRE and BETTY A. MYHRE,  
Husband and Wife,  
Plaintiffs,  
vs.

FEDERAL DEPOSIT INSURANCE COR-  
PORATION, as Receiver for the Bank of  
North Idaho, a Corporation,  
Defendant.

### STATEMENT OF THE CASE

Defendant appeals on questions of law.

A concise statement of the points on which defendant intends to rely on the appeal, is as follows, to wit:

#### I.

That the United States District Court was without jurisdiction to grant plaintiffs priority, since judicial designation of the order of priority of claims against an insolvent, Idaho state bank, in the hands of defendant receiver for liquidation, lies exclusively with the district court of Idaho of the county where the bank is located, as provided in Section 26-913, Idaho code.

#### II.

No trust fund or trust in any property in the hands of the defendant receiver, was alleged. In their action, the plaintiffs sought only relief by way of damages for an alleged wrongful conversion of property and made proof accordingly.

The questions presented by this appeal arise by virtue of defendant's objections to the proposed Findings of Fact and Conclusions of Law and Judgment, submitted to the trial court (which proposed Findings and Judgment were later adopted) and the decision of the United States District Court overruling these objections.

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The Judgment proposed and later entered in the above-entitled case, from which Judgment this appeal is taken, is as follows, to wit:

“In the United States District Court for the  
District of Idaho, Northern Division  
No. 1988

MERLE C. MYHRE and BETTY A. MYHRE,  
Husband and Wife,

Plaintiffs,

vs.

FEDERAL DEPOSIT INSURANCE COR-  
PORATION, as Receiver for the Bank of  
North Idaho, Substituted for the Bank of  
North Idaho, a Corporation,

Defendant.

### JUDGMENT

This action having come regularly on for trial before Honorable Chase A. Clark, presiding judge, sitting without a jury, the plaintiffs appearing in person and with their attorney, E. T. Knudson, of the firm of Whitla & Knudson, and the defendant appearing by its attorneys of record, W. F. Mc-

Naughton and H. S. Sanderson, and the Court after hearing and considering the evidence introduced on behalf of the respective parties has made and entered herein Findings of Fact and Conclusions of Law, which are hereby specifically referred to and made a part of this Judgment, in which said Findings of Fact and Conclusions of Law it is ordered that a Judgment be entered herein in favor of the plaintiffs and against the Defendant;

Now, Therefore, in accordance with the law and premises and said Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed, that the plaintiffs, Merle C. Myhre and Betty A. Myhre, husband and wife, do have and recover of and from the defendant, Federal Deposit Insurance Corporation, as receiver for the Bank of North Idaho, a corporation, the sum of \$5,184.46, together with interest thereon at the rate of 6% per annum from May 1, 1954, to the date hereof in the amount of \$544.32, making a total judgment of \$5,728.78.

It Is Further Ordered, Adjudged and Decreed, that the defendant shall within 20 days from the date hereof tender and deliver to the plaintiffs at Rathdrum, Idaho, the following-described articles which have been identified by the plaintiffs as belonging to them, to wit:

Miscellaneous Items:

1—1 set of baby pictures.

2—1 carved wooden plaque of gun in holster.

- 3—1 Italian rapier.
- 4—2 oil paintings without frames, McKenzie.
- 5—1 rake.
- 6—1 shovel.
- 7—1 leaf rake.
- 8—1 picture album.
- 9—2 framed pictures of family.
- 10—1 framed picture, Christ, tinted.
- 11—1 pair spurs.
- 12—1 box Christmas cards.
- 13—1 cigarette container with 2 trays.

Clothing:

- 1—1 blue cap, lady's.
- 2—1 green, shorts. (Jantzen.)
- 3—1 white, cotton shorts.
- 4—1 red shorts. (Whit Stag.)

It Is Further Ordered, Adjudged and Decreed, that the money judgment hereby awarded is entitled to the priority as a trust fund in the order of payment of the debts of the original defendant, Bank of North Idaho, a corporation, and that the defendant as receiver shall allow this Judgment such priority.

It Is Further Ordered, Adjudged and Decreed, that the plaintiffs recover their costs and disbursements herein incurred, taxed in the sum of \$185.56.

Dated this 16th day of March, A.D. 1956.

CHASE A. CLARK,  
District Judge."

The Findings of Fact and Conclusions of Law proposed and later adopted, are as follows, to wit:

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

“This cause having come regularly on for trial before Honorable Chase A. Clark, presiding Judge, the plaintiffs appearing in person and with their attorney, E. T. Knudson, of the firm of Whitla & Knudson, and the defendant appearing by its attorneys, W. F. McNaughton and H. S. Sanderson, whereupon oral and documentary evidence was introduced on behalf of the respective parties, following which briefs were regularly submitted by the respective parties, and the Court, after hearing and considering the evidence introduced and the records and files in this action, the Court makes the following:

### Findings of Fact

#### I.

That the plaintiffs, Merle C. Myhre and Betty A. Myhre, are husband and wife, and are residents of Spokane County, State of Washington.

That the original defendant, Bank of North Idaho, was at the commencement of this action, a corporation organized and existing under and by virtue of the laws of the State of Idaho and engaged in the banking business with its principal place of business at Priest River, Bonner County,

State of Idaho. That thereafter and pursuant to motion regularly made and order entered the Federal Deposit Insurance Corporation, as receiver for the Bank of North Idaho, was regularly substituted as defendant herein.

## II.

That on November 10, 1953, these plaintiffs obtained from the defendant, Bank of North Idaho, a loan in the principal sum of \$1,500.00 and to evidence said loan these plaintiffs executed a promissory note bearing date the 10th day of November, 1953, in the principal sum of \$1,540.00 due March 10, 1954, which said principal sum included interest at 8% per annum to the due date. For the purpose of securing the payment of the foregoing mentioned note the plaintiffs executed a chattel mortgage upon certain personal property.

## III.

That after default had occurred in connection with some of the installments payable according to the terms of said note these plaintiffs, in pursuance of an understanding and an agreement entered into between the plaintiffs and the defendant bank, through their respective attorneys, executed to the defendant a bill of sale to a quantity of personal property, belonging to the plaintiffs, which at that time was stored at Bekins Moving & Storage Company at Spokane, Washington.

The terms and conditions of the agreement under which the plaintiffs executed and delivered to the defendant the bill of sale referred to were:

That the defendant would promptly release to the plaintiffs all articles of a personal nature which were among the stored property referred to in the bill of sale, and that the defendant would promptly notify the plaintiffs when and where they could call for the items to be released to them.

That upon receipt of the bill of sale by the defendant, the defendant would promptly proceed to sell for the best prices obtainable such of the personal property retained by it as would be necessary to pay all sums owing to it, including the principal and interest evidenced by the note hereinbefore referred to, also all storage and transfer expenses and selling costs together with an attorney fee of \$150.00 and to return to the plaintiffs any property not sold or any excess proceeds from such sale.

#### IV.

That pursuant to the terms of such agreement, and in reliance thereon, the plaintiffs turned over to the defendant the property described in the schedule attached to plaintiffs' complaint marked "Exhibit A," which said property was turned over and delivered to the defendant on the 17th day of March, 1954, and the Court finds that said property, at the time of the delivery of same to the defendant, was of the fair value of \$8,000.00.

#### V.

That the defendant violated the terms of its agreement with the plaintiffs in that it failed to



return to the plaintiffs the articles of personal—it failed to sell the property for the best price obtainable and it failed to give the plaintiffs any report or accounting concerning the property, and the Court finds that the defendant converted said property and that such conversion by the defendant occurred as of the first day of May, 1954.

## VI.

The Court further finds that the defendant has certain property in its custody which should and can be returned to the plaintiffs which property is of the value of \$739.00, the property referred to as returnable being the following:

### Miscellaneous Items:

- 1—1 set of baby pictures.
- 2—1 carved wooden plaque of gun in holster.
- 3—1 Italian rapier.
- 4—2 oil paintings without frames, McKenzie.
- 5—1 rake.
- 6—1 shovel.
- 7—1 leaf rake.
- 8—1 picture album.
- 9—2 framed pictures of family.
- 10—1 framed picture, Christ, tinted.
- 11—1 pair spurs.
- 12—1 box Christmas cards.
- 13—1 cigarette container with 2 trays.

### Clothing:

- 1—1 blue cap, lady's.



2—1 green, shorts. (Jantzen.)

3—1 white, cotton shorts.

4—1 red shorts. (Whit Stag.)

## VII.

The Court finds that the plaintiffs are entitled to a judgment herein in the amount of \$8,000.00 (being the fair value of the property converted) less the following:

- |     |   |            |
|-----|---|------------|
| (1) | The amount of the Original note.  | \$1,540.00 |
| (2) | Interest on \$1,500.00 (the amount of the original loan) from March 10, 1954, to May 1, 1954.....                                     | 17.00      |
| (3) | The value of the property to be returned by the defendants as hereinbefore mentioned .....  | 739.00     |
| (4) | Storage and transfer costs.....   | 369.54     |
| (5) | Attorney's fees which were agreed to between the parties involved prior to the time the property was delivered to the defendant ..... | 150.00     |

leaving a total judgment in favor of the plaintiffs and against the defendant in the amount of \$5,184.46 together with interest thereon at the rate of 6% per annum from May 1, 1954, to the date hereof.

The Court further finds that the defendant upon taking possession of plaintiffs' property involved

in this action became a trustee of such property and by reason for such status and the conversion of such property by the defendant, the judgment granted herein is entitled to a priority as a trust fund.

From the foregoing Findings of Fact the Court makes the following:

### Conclusions of Law

#### I.

That this Court has acquired due jurisdiction of the parties to and the subject matter of this action.

#### II.

That this action has come regularly on for trial and that this Court has jurisdiction to enter judgment herein.

#### III.

That the plaintiffs are entitled to a judgment herein against the Federal Deposit Insurance Corporation, as receiver for the Bank of North Idaho, a corporation (the original defendant), in the amount of \$5,184.46, together with interest thereon at the rate of 6% per annum from May 1, 1954, to the date hereof and that said judgment will carry with it a priority as a trust fund.

That as a part of said judgment the defendant shall be required to forthwith deliver to the plaintiffs the property itemized and listed in Paragraph VI of the foregoing Findings of Fact.

It Is Ordered, that a judgment be entered herein accordingly.

Dated this 16th day of March, A.D. 1956.

CHASE A. CLARK,  
District Judge.”

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Originally, this action was against the Bank of North Idaho.

Subsequent to the filing of said action, at the request of R. U. Spaulding, Commissioner of Finance of the State of Idaho, the Federal Deposit Insurance Corporation, pursuant to Section 26-1403, Idaho code, was duly appointed, and became, receiver and liquidator of the Bank of North Idaho, on the 30th day of April, 1955. Upon motion, an order was entered in these proceedings on the 14th day of July, 1955, substituting said receiver as party defendant, in place and in stead of the Bank of North Idaho.

[Title of District Court and Cause.]

### COMPLAINT

Comes now the above-named plaintiffs and for cause of action against the above-named defendant complain and allege:

#### I.

That the plaintiffs, Merle C. Myhre and Betty A. Myhre, are husband and wife and are residents of Spokane County, State of Washington.

That the defendant, Bank of North Idaho, is a corporation organized and existing under and by virtue of the laws of the State of Idaho, and engaged in the banking business with its principal place of business at Priest River, Bonner County, State of Idaho.

## II.

That the jurisdiction of this Court exists and is founded upon diversity of citizenship and a jurisdiction amount in excess of \$3,000.00, exclusive of costs and interest.

## III.

That heretofore and on November 10, 1953, these plaintiffs obtained from the defendant, at its principal place of business, Priest River, Idaho, a loan in the principal sum of \$1,540.00 and to evidence said loan these plaintiffs executed a promissory note bearing date the 10th day of November, 1953, in the principal sum of \$1,540.00 under the terms of which promissory note the said principal sum was to be paid in four equal installments of \$385.00 each, the first payment due December 10, 1953, and monthly installments thereafter until paid in full. Interest at the rate of eight (8%) per cent per annum to be paid at the time of and in addition to the installments upon the principal.

## IV.

For the purpose of securing the payment of the foregoing-mentioned promissory note these plaintiffs, at said time and place, agreed to execute, in favor of the defendant, a chattel mortgage upon

certain personal property, a list of which personal property was at that time and place prepared in the handwriting of the plaintiff, Merle C. Myhre, and turned over to the defendant, through its president and managing officer, James C. Morley, with the request and understanding that said list of personal property would be copied and incorporated in the chattel mortgage. That pursuant to such agreement the plaintiffs executed a chattel mortgage form which did not at that time contain a description of the property, however, it was understood and agreed by and between the plaintiffs and the said James C. Morley, acting for the defendant corporation, that the list of personal property prepared by the plaintiff, Merle C. Myhre, as hereinbefore alleged, would be copied and inserted in the chattel mortgage and that they, the plaintiffs, would be furnished a true copy of the chattel mortgage within a very few days after said date of November 10, 1953. That the property which the plaintiffs listed to be included in said chattel mortgage and which was included in said chattel mortgage was of the reasonable value of in excess of \$3,800.00.

## V.

That thereafter the defendant through its said officer caused to be inserted in said chattel mortgage so executed by these plaintiffs, the list of personal property which was prepared and delivered to the defendant by the plaintiffs as hereinbefore alleged and in addition to the articles of property so listed by the plaintiff, the defendant,

through its said agent, incorporated and included in said chattel mortgage the following articles of personal property, to wit:

1 Cooler Ace Co.

1 Propane Restaurant Size Range, Wolf.

1 Heating System, Propane, 11 units.

1 Cash Register.

1 Ami Juke Box.

1 14-ft. Norseman Boat.

That said articles were included and described in said chattel mortgage without the knowledge, consent or authority of these plaintiffs and in violation of the agreement theretofore had between the plaintiffs and defendant concerning the security which was to be given in connection with the loan hereinbefore mentioned.

## VI.

That notwithstanding the defendant's agreement to furnish the plaintiffs with a true and correct copy of the chattel mortgage, as hereinbefore alleged, the defendant failed, neglected and refused to furnish the plaintiffs with such copy and as a result thereof these plaintiffs did not learn what had been included and incorporated in the chattel mortgage until plaintiffs' attorney procured a certified copy of said chattel mortgage from the office of the County Recorder, Bonner County, Idaho, on April 7, 1954. That immediately upon learning that the foregoing-mentioned articles had been included in the description contained in said

chattel mortgage these plaintiffs promptly protested to the defendant but the defendant refused to recognize their protest.

That after said chattel mortgage had been executed and on or about February 2, 1954, these plaintiffs, in pursuance of an understanding and an agreement entered into between the plaintiffs and the defendant through their respective attorneys, under the terms of which agreement the plaintiffs agreed to execute to the defendant a bill of sale to a quantity of personal property, belonging to the plaintiffs, which at that time was in storage at Bekins Moving and Storage Co. in Spokane, Washington, which stored property included the property covered by the said chattel mortgage.

That the terms and conditions of the agreement under which the plaintiffs executed and delivered to the defendant the bill of sale hereinbefore referred to were as follows:

That the defendant would promptly release to the plaintiffs all articles of a personal nature which was among the stored property referred to in the bill of sale.

The defendant to promptly notify the plaintiffs when and where they could call for the items to be released to them.

Upon receipt of the bill of sale by the defendant, the defendant agreed to promptly proceed to sell for the best prices obtainable, the personal property retained by it, and out of



the proceeds of the sale, the defendant was to deduct all sums owing to it, including the principal and interest evidenced by the note and mortgage hereinbefore referred to including expenses of storage, transfer and selling cost together with an attorney fee of \$150.00 and to turn over to the plaintiffs any surplus proceeds remaining from the sale.

### VIII.

That pursuant to the terms of said agreement the plaintiffs turned over to the defendant the property described in the schedule attached hereto marked "Exhibit A" and made a part hereof, which said property was turned over and delivered to the said defendant on or about the 17th day of March, 1954. That said property was at the time of said delivery to the said defendant of the reasonable and fair value of in excess of \$10,000.00, and being of the value of \$8,000.00 in excess of the amount which the plaintiffs owed the defendant.

### IX.

The defendant took possession of the said property at the time and in the manner hereinbefore alleged and has never given to the plaintiff any notice as to when or where any sale of any of the property would be held or conducted. Not having received any notice as concerns any sale or any notice or information as to when or where the plaintiffs could receive the personal items which were to be returned to them, the plaintiffs, through



their attorney and under date of April 10, 1954, mailed to Mr. Samuel Morley, president of the defendant bank, a written demand for an accounting of all items taken and a demand for the return of all items which were to be returned to the plaintiffs. No reply or response was received from the defendant and thereafter the plaintiffs, on June 14, 1954, caused to be mailed to the defendant another written notice of demand in words and figures as follows, to wit:

Notice

To: Bank of North Idaho; Priest River, Idaho.

Not having received any report whatever concerning the disposition of the personal property which was turned over to you by us under a bill of sale sent you early in February last in connection with our settlement with you of the amount payable under our chattel mortgage;

And not having received notice of the time and place we may receive from you our clothing and personal items which were to be returned to us, in accordance with arrangements made by our respective attorneys;

We, the undersigned, respectfully demand that within ten (10) days of the date hereof you furnish us an accounting of the sale of the property concerning which said bill of sale was given you by us early in February last;

And also, we hereby respectfully demand that you do, within ten (10) days of the date hereof,

notify us as to where and when we may receive the clothing and personal items above referred to.

Dated this 11th day of June, A.D. 1954.

/s/ MERLE C. MYHRE,

/s/ BETTY MYHRE.

## X.

Thereafter, and in response to the last above-mentioned demand, and on or about the date of June 16, 1954, the plaintiffs, through their attorney, received from the defendant a letter advising the plaintiffs as follows:

“Please advise your clients that they may pick up their personal effects at the Rathdrum State Bank on June 21/54 at 10:30.

“While the details of the aforesaid sale of the chattel are not necessarily any of their concern we state that they were sold for \$1,000.00.”

That thereafter and pursuant to the direction contained in said letter, the plaintiffs called at the Rathdrum State Bank on June 21, 1954, at the time specified, but the writer of the said letter, James C. Morley, was not at said bank at the stated time and no one at the said bank could or would give the plaintiffs any information as to where their property could be found or secured. That the defendant has not turned over or tendered to the plaintiffs the personal property they were entitled to receive back from the defendant. The defendant

has never given to the plaintiffs any statement or report of the above sale of the property except said statement hereinbefore set forth.

## XI.

That the defendant has violated the terms of its agreement with the plaintiffs in the following respects:

That the defendant has failed, neglected and refused to return to the plaintiffs the articles of personalty which it agreed to return to the plaintiffs.

That the defendant has failed, neglected and refused to sell the property, which was turned over to it for sale, for the best prices obtainable.

That the defendant has failed, neglected and refused to give the plaintiffs any report or accounting concerning what has been done with the property or where it is located.

Plaintiffs' therefore allege that the defendant by its action has converted said property to its own use in violation of the agreement entered into as hereinbefore alleged and by reason thereof the defendant has caused the plaintiffs to suffer damage and loss to the extent of \$8,000.00.

Wherefore, plaintiffs pray judgment as follows:

(1) That the defendant be required to forthwith account to the plaintiffs concerning what disposition, if any, has been made regarding the property

delivered to it pursuant to the agreement hereinbefore alleged.

(2) That the Court determine the fair value of the property turned over to the defendant by the plaintiffs and that the plaintiffs be awarded a judgment against the defendant in the mount of \$8,000.00, said amount being the fair value of the property turned over to the defendant by the plaintiffs, less the amount found payable to the defendant under the promissory note and chattel mortgage hereinbefore referred to and less the storage, transfer, cost, and attorney's fees in the amount of \$150.00.

(3) That the plaintiffs recover their costs and disbursements herein incurred.

WHITLA & KNUDSON,

By E. T. KNUDSON,

Attorneys for Plaintiffs, Residing at Coeur d'Alene,  
Idaho.

Duly verified in Aug., 1954.

“EXHIBIT A”

(Attached to Plaintiff's Complaint)

Kitchen and Dishware:

1. (3) Cast iron frying pans—small, medium and large (black).
2. (1) Revere coffee pot—8 cup.

3. (3) Stainless steel mixing bowls.
4. (1) Large aluminum roaster.
5. (1) Double boiler—Pyrex.
6. (1) Double boiler—Revere.
7. (3) Assorted size pans—Revere.
8. (1) 2-qt. Hotpoint pressure cooker.
9. (1) Magnetic wall type can opener.
10. (1) 1 set German knives (Messerfralik), includes meat cleaver, bread, paring, cake, etc.
11. (1) Setting for 8, sterling silver, in mahogany case. (Estmoreland.)
12. (1) Setting for 8, Franciscan pottery—celery dish, covered dish, 2 extra serving dishes, 2 platters.
13. (1) Tea set for six, Bavarian china.
14. (1) Silver chased whiskey decanter W/6 matching glasses and tray (antique).
15. (1) Set of 6 engraved copper mugs.
16. (1) Sunbeam hand mixer with twin bowls (electric).
17. (1) Westlox kitchen clock (electric).
18. (6) Assorted copper and ceramic type planters.
19. (1) Midget white ivory Packard Bell kitchen radio.

Living Room, Den and Dining Room Furnishings and Decorations:

1. (1) China mantelpiece clock (electric).
2. (1) Cuckoo clock (broken).

3. (1) Seth Thomas 22" 8-day clock with blond oak case with raised Roman numerals.
4. (1) 10" barometer cased in teakwood carved in design of anchor (antique).
5. (2) Chinese vases 12" high with carved green and gold dragons (antiques).
6. (2) Oil paintings without frames, painted by Mrs. Myhre's grandmother, Mrs. E. A. McKenzie (keepsakes).
7. (4) Chinese 8" x 20" prints with feather outlay depicting pagodas, tigers, mountains, etc., with simulated teakwood frames.
8. (1) HH and carved wooden plaque of gun in holster (antique and keepsake).
9. (1) Italian rapier of 17th century, Latin-inscribed blade (antique).
10. (1) Maine Gauche hand dagger, Italian, 17th Century, with family crest on guard (antique).
11. (1) Spanish casque or helmet, 16th Century sword, dent on side, with name, Juan de Pina, on front (antique).
12. (1) 1865 Navy Colt revolver with elkhorn grips with engraved barrel and cylinders, initials D. P. B. on butt (rare).
13. (3) Pair book ends—bronze baby shoes, bronze deer and copper horses.
14. (1) 12" world globe on brass base, shaped as eagle claw (antique).

15. (1) Ronson table lighter (decanter).
16. (4) Hilton pocket lighters.
17. (1) Underwood portable typewriter with gray case, initials B. A. M.
18. (1) Black onyx Shaeffer pen set with ink decanter.
19. (1) Ivory desk set with scissors, letter opener and ruler, in brown leather case.
20. (1) Cherry wood candy bowl.
21. (1) Black ebony cigarette box (antique).
22. (2) Cigarette containers with ash trays to match.
23. (1) Set bagpipes (McKenzie plaid).
24. (1) Engraved quillons wrapped in oil cloth (antique).

#### Personal Clothing:

1. (4) Ladies sweaters, size 36; colors pink, blue, tan and green—2 Jantzens and 2 cashmeres, bought in Canada.
2. (3) Pair ladies shorts, size 12—outdoor—colors red, white and green. 2 White Stag and 1 Jantzen, also an old pair of white.
3. (2) Ladies bathing suits, size 34, Jantzens.
4. (3) Young girls' bathing suits, sizes 6 and 8—1 green, gross and pink.
5. (2) Pair lady's shoes, size 6½ AAA, bought in St. Paul, originals.
6. (4) Beach towels, assorted colors.



7. (6) Pair lady's gloves—size  $6\frac{1}{2}$ —3 leather and 3 cloth.
8. (1) Box lady's costume jewelry, mostly summer.
9. (4) Ladies' nightgowns—1 purple, 1 blue and white, 1 black, 1 pink.
10. (1) Pair men's swimming trunks with Hawaiian print, size 32.
11. (6) Men's sports shirts—3 Arrow, long sleeve, size  $15\frac{1}{2}$ ; 3 Van Huesen, short sleeve.
12. (2) Pair men's summer weight slacks, Botany brand gabardine; 1 tan, 1 green; size 32 by 34 length.
13. (2) Pair men's sports shoes—I rubber-soled, size  $8\frac{1}{2}$ , and 1 leather, Bostonian brand.
14. (1) Alligator brand, size 42, long British model trench coat with zip out plaid lining—initials MCM inside.
15. (5) Ladies' handbags — 2 handbags leather, 1 corday, 1 dark brown leather and 1 silver evening bag.
16. Misc. ribbons, hankies, scarfs, belts, and etc.

#### Personal and Private Papers:

1. (3) Three sets baby pictures with frames, 1 with 8 tinted, age 6 months, 1 black and white, age 1 year, and 1 larger picture, tinted, six years old (Mrs. Myhre's daughter).



2. (1) "Solomon Christ," tinted, with frame.
3. (1) Black and white Kent & Arlene Myhre (Christmas present).
4. Various pictures of both families.
5. Accounts, cancelled checks, personal letters, letters of recommendation, service record, discharge record, insurance policies, business records, school mementos, inventories, receipts, survey plots and sketches, keepsakes, travel folders, tickets, etc.

Bedroom, Bath and Accessories:

1. (1) Ladies' ivory dresser set of brush, comb, mirror with matching tray and fingernail set.
2. (1) Ceramic doll with purple dress—handmade.
3. (1) Ladies' set dressing table, decanters for lotions, powder, etc. (4-pc. set cut glass).
4. (6) Down pillows.
5. (1) Sewing kit of bamboo, complete with pinking shears, needles, thread, etc.
6. (9) Blankets (approx.), 2 Hudson Bays, 1 pink, 1 blue green, 1 blue flower, 1 red, 1 green flower and 1 red flower, also 1 Orr health blanket.
7. (1) G. E. electric blanket (green), with twin dials.
8. (1) Crosley bedroom clock radio, in ivory and green, with broken volume control.

triever and pheasants on breech. (In tan cowhide carrying case with copper brush bore cleaner and solvent, Hoppe's No. 9 kit; 1 No. 357 Magnum Smith and Wesson revolver with mottled frangite grips, in tan cowhide, U. S. Air Corps shoulder holster—has 4-inch barrel and small chip out of right grip.

11. (1) Bausch and Lomb 8 x 50 binoculars, with night lens, in grey heavy color, with brown carrying case, with combat infantryman badge on flap.
12. (2) Pair spurs—1 blunt army-type and one pair silver mounted Mexican vaquero type, with 3" rowels (souvenirs).
13. (1) 30 caliber M-1 with sling, Army carbine (new), belonging to Major Harlan Jackson who left it in my care until he returns from Germany.
14. (1) Double Alaskan down sleeping bag, with waterproof cover and hood.
15. (1) Complete set of Rudyard Kipling, bound in leather—10 volumes.
16. (1) Set of Robert W. Service, 6 volumes, bound in vellum.
17. (2) Dozen or more of the last ten years' best sellers—authors, A. J. Cronin, Ernest Hemingway, Shellebarger, etc.
18. (1) Zeiss Contaflex 35 MM. camera, with F 2/8 lens and flash attachments, in

leather and canvas carry-all, with complete instructions and two books on camera technique.

Furniture:

1. (1) Chrome kitchen set, including four upholstered chairs.
2. (1) Dining room set, including four upholstered chairs and buffet.
3. (1) T-piece sectional davenport.
4. (1) Occasional chair (green).
5. (1) T.V. tweed chair (green).
6. (2) Teakwood end tables.
7. (2) Teakwood lamps.
8. (1) Corner table (blond).
9. (1) Black metal three-way lamp (grey shade).
10. (1) Three-way floor lamp (green shade).
11. (1) Three-piece blond mahogany bedroom set.
12. (1) Three-piece grey walnut bedroom set.
13. (1) Four-piece maple bedroom set (wagon wheel design).
14. (3) Beauty Rest mattresses and springs.

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[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated, that on Tuesday, January 24, 1956, we, the undersigned attorneys of record in the above-entitled action, went to the Rathdrum State Bank at Rathdrum, Idaho, and in com-

pany with the plaintiffs in this action examined such of the articles as were there which are listed in Exhibit "A," attached to the defendant's Answer in this action, for the purpose of determining which of the items so listed in said exhibit could be identified as belonging to the plaintiffs which could be returned to the plaintiffs and the following items are the only ones, described in said exhibit, which were identified by the plaintiffs as being part of the property involved in this action, to wit:

Miscellaneous Items:

- 1—1 set of baby pictures.
- 2—1 carved wooden plaque of gun in holster.
- 3—1 Italian rapier.
- 4—2 oil paintings without frames, McKenzie.
- 5—1 rake.
- 6—1 shovel.
- 7—1 leaf rake.
- 8—1 picture album.
- 9—2 framed pictures of family.
- 10—1 framed picture, Christ, tinted.
- 11—1 pair spurs.
- 12—1 box Christmas cards.
- 13—1 cigarette container with 2 trays.

Clothing:

- 1—1 blue cap, lady's.
- 2—1 green, shorts (Jantzen).
- 3—1 white, cotton shorts.
- 4—1 red shorts (White Stag).

At said time and place other articles were examined by plaintiffs, but the foregoing are the only ones which were identified by the plaintiffs as having belonged to them which are involved in this action.

Dated this 26th day of January, A.D. 1956.

E. T. KNUDSON,  
Attorney for Plaintiff.

H. S. SANDERSON,  
Attorney for Defendant.

ANSWER  
(Abbreviated)

The Answer alleges the bill of sale was in settlement of the indebtedness except as to certain property which was to be returned to the plaintiffs, which at all times since has been subject to their call.

Denies generally other allegations of the complaint, and alleges a much lower value of the property.

Evidence

The plaintiffs at the trial offered proof of all the allegations of their complaint and of the alleged value of each item contained in "Exhibit A" attached to their complaint.

The defendant offered its proof on values and proof supporting the allegations of the answer and its denials.

At the conclusion of the trial the Court took the matter under advisement and briefs of the respective parties were submitted and thereafter the Court found for the plaintiffs.

Thereafter, and on January 11, 1956, the Court rendered and served upon counsel the following memorandum, to wit:

[Title of District Court and Cause.]

### MEMORANDUM

Clark, Chief District Judge.

This case was tried before the Court, sitting without a jury. Briefs have been submitted and the Court has fully considered the same.

This action is brought by the plaintiffs for an alleged conversion of their property by the defendant bank. The plaintiffs seek the return of the property or judgment of \$8,000, which is the alleged fair value of the property, less amounts plaintiffs owed at the time of the alleged conversion on a promissory note which they executed to defendant bank, and less storage and transfer cost of the property, and an attorney fee which the plaintiffs agreed to pay.

The Court is of the opinion that under the evidence and the law, the plaintiffs have shown a conversion by the defendant as of the 1st day of May, 1954. From the evidence it appears that the bank has certain property in its custody which should and can be returned to the plaintiffs herein and

the Court is of the opinion that the value of this property is \$1,181.50. The original note in the amount of \$1,540.00, dated November 10, 1953, and due March 10, 1954, included interest at 8% to the due date.

The Court fixes the fair value of the property converted at \$8,000. The plaintiffs are entitled to judgment in that amount, less the following:

- |     |  |            |
|-----|--|------------|
| (1) | The value of the property to be returned by the bank as set forth above .....  | \$1,181.50 |
| (2) | Interest on \$1,500 (the amount of the original loan) from March 10, 1954, to May 1, 1954.....                                 | 17.00      |
| (3) | Storage and transfer costs.....  | 369.54     |
| (4) | Attorney's fees as shown by the exhibits and testimony to have been agreed upon by the parties involved, in the amount of..... | 150.00     |

or a total judgment with priority in favor of the plaintiffs for \$4,741.86, together with interest at 6% from May 1, 1954, to date.

January 11, 1956.

That thereafter, the attorneys for plaintiffs proposed Findings of Fact and Conclusions of Law which were finally entered as above set forth herein.

Before the entry of said Findings of Fact and Conclusions of Law, the defendant's attorneys served upon plaintiffs' attorneys, and filed with the court its objections thereto as follows:



[Title of District Court and Cause.]

EXCEPTIONS TO PROPOSED  
FINDINGS AND JUDGMENT

Comes now the defendant in the above-entitled action and excepts to the proposed Findings of Fact and Conclusions of Law as follows:

To the last paragraph of the proposed Seventh Finding of Fact, wherein the Court is asked to find that the defendant became a trustee of the property alleged in the complaint to have been converted, and that the judgment is entitled to a priority as a trust fund. This exception is on the ground

First: That it is not responsive to issues raised by the pleadings;

Second: That the matter of priority is subject to determination as provided by I.C. 26-913;

And, also, except to the proposed provision in the Decree providing:

“It Is Further Ordered, Adjudged and Decreed that the money judgment hereby ordered is entitled to the priority as a trust fund in the order of payment of the debts of the original defendant, Bank of North Idaho, a corporation, and the defendant as receiver shall allow this judgment such priority,” as also being contrary to said Sections 26-913 and 26-915, I.C.

Dated this 2nd day of February, 1956.

W. F. McNAUGHTON,  
Attorney for Defendant.



Thereafter, and on the 16th day of March, 1956, a second memorandum was entered by the judge and served upon counsel as follows:

[Title of District Court and Cause.]

### MEMORANDUM

Clark, C. J.

Plaintiffs herein have submitted proposed Findings of Fact, Conclusions of Law and Judgment as directed by the Court, and thereafter objections were filed thereto by defendant's counsel, in which objection was made to the finding that this recovery by the plaintiffs was entitled to priority as a trust fund and to the Judgment in accordance therewith.

In view of the objections made the Court has further considered the matter. Where the mortgagee obtains and is in possession of goods, as shown by the record herein, it is the Court's opinion that the mortgagee acts as trustee for the mortgagor. It appears to this Court, therefore, that this judgment is entitled to priority as a trust fund in accordance with the Idaho statutes. The objections will be overruled and the proposed Findings of Fact, Conclusions of Law and Judgment will be signed and filed as of this date.

Dated March 16, 1956, at Boise, Idaho.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

“Notice Is Hereby Given, that the Federal Deposit Insurance Corporation, as receiver of the Bank of North Idaho, substituted for the Bank of North Idaho, a corporation, above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Judgment entered in this action on the 16th day of March, 1956.

Dated this 12th day of April, 1956.

ROYAL L. COBURN,  
General Counsel;

JOHN L. CECIL,  
Assistant General Counsel;

GRAYDON W. SMITH,  
Attorney General for Idaho;

McNAUGHTON & SANDER-  
SON,

/s/ W. F. McNAUGHTON,  
Attorneys for Appellant.

Filed: April 14, 1956.

The defendant, being an agency of the United States, no bond on appeal is required.

It Is Hereby Stipulated, between the parties, by their respective attorneys, that pursuant to Rule 76, the foregoing Statement of the Case contains all matters necessary to a decision by the Appellate Court of questions raised on the appeal and may be certified as the record on the appeal taken from the Judgment to the United States Court of Appeals for the Ninth Circuit.

Dated this 4th day of May, 1956.

WHITLA & KNUDSON,

/s/ E. T. KNUDSON,

Attorneys for Plaintiffs and  
Appellees.

ROYAL L. COBURN,

General Counsel;

JOHN L. CECIL,

Assistant General Counsel;

GRAYDON W. SMITH,

Attorney General for Idaho;

McNAUGHTON & SANDER-  
SON,

/s/ W. F. McNAUGHTON,

Attorneys for Defendant and  
Appellant.

The foregoing Statement of the Case is approved as sufficient to fully present questions raised by the appeal, and may be certified as such by the Clerk

of this Court, to the United States Court of Appeals for the Ninth Circuit.

Dated this 1st day of May, 1956.

/s/ CHASE A. CLARK,

Judge of the U. S. District  
Court.

[Endorsed]: Filed May 1, 1956.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Idaho—ss.

I, Ed M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify the foregoing Statement as the appeal, under Rule 76 (FRCP), in this case.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court this 15th day of May, 1956.

[Seal]

ED M. BRYAN,  
Clerk;

By /s/ LONA MANSER,  
Deputy.

[Endorsed]: No. 15130. United States Court of Appeals for the Ninth Circuit. Federal Deposit Insurance Corporation, as Receiver of the Bank of North Idaho, Substituted for the Bank of North Idaho, Appellant, vs. Merle C. Myhre and Betty A. Myhre, Husband and Wife, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Northern Division.

Filed May 17, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals for  
the Ninth Circuit  
No. 15130

FEDERAL DEPOSIT INSURANCE COR-  
PORATION, as Receiver of the Bank of North  
Idaho, Substituted for the Bank of North  
Idaho, a Corporation,

Appellant,

vs.

MERLE C. MYHRE and BETTY A. MYHRE,  
Husband and Wife,

Appellees.

### DESIGNATION OF POINTS AND RECORD

Pursuant to Rule 17 (6) of the United States  
Court of Appeals for the Ninth Circuit, Appellant  
states the points upon which it intends to rely, are:

1. The District Court erred in its Findings of  
Fact as follows:

“The Court further finds that the defendant,  
upon taking possession of plaintiff’s property  
involved in this action, became a trustee of  
such property and by reason for such status  
and the conversion of such property by the  
defendant, the judgment granted herein is en-  
titled to a priority as a trust fund.”

over Appellant’s objections on the grounds that the  
Court acted:

(a) Beyond its jurisdiction, and

(b) The Findings of Fact are not within  
the actions tendered by the Complaint.

2. The District Court erred in incorporating in its decree the following:

“It Is Further Ordered, Adjudged and Decreed that the money judgment hereby awarded is entitled to the priority as a trust fund in the order of payment of the debts of the original defendant, Bank of North Idaho, a corporation, and that the defendant as receiver shall allow the judgment such priority.”

over the objections of appellant, on the following grounds:

- (a) Beyond the court's jurisdiction, and
- (b) Not within the actions tendered by the complaint.

3. The action at bar is in personam for damages and does not seek to establish a trust.

With the foregoing statement of points, the appellant hereby designates the Statement of the Case, stipulated and filed on the 1st day of May, 1956, in the District Court, pursuant to Rule 76, Federal Rules of Civil Procedure, and approved by the District Court as sufficient record on appeal.

Dated this 22nd day of May, 1956.

McNAUGHTON & SANDER-  
SON,

/s/ W. F. McNAUGHTON,  
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed May 25, 1956.

